

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN SENATE JUNE 19, 2012

AMENDED IN ASSEMBLY MAY 25, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1907

Introduced by Assembly Member Bonnie Lowenthal

February 22, 2012

An act to amend Section 2602 of, and to add Section 2603 to, the Penal Code, relating to inmates.

LEGISLATIVE COUNSEL'S DIGEST

AB 1907, as amended, Bonnie Lowenthal. Inmates: psychiatric medication.

Existing law requires that no inmate be administered psychotropic medication on a nonemergency basis without the inmate's informed consent, unless after a noticed hearing is conducted in which an administrative law judge determines by clear and convincing evidence that the inmate has a mental illness or disorder, that as a result of that illness the inmate is gravely disabled and lacks the capacity to consent or refuse treatment or is a danger to self or others if not medicated, that there is no less intrusive alternative to involuntary medication, and that the medication is in the inmate's best interest. Existing law authorizes the Department of Corrections and Rehabilitation to seek to initiate involuntary medication on a nonemergency basis only if specified conditions are met, including that a psychiatrist has determined that the

inmate is gravely disabled or is a danger to self or others and does not have the capacity to refuse treatment with psychotropic medication.

Existing law allows a physician to administer psychotropic medication to a prison inmate during an emergency consisting of a sudden and marked change in an inmate's mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm. If psychotropic medication is administered during an emergency, existing law authorizes the medication to be administered for no more than 5 days.

This bill would contain findings and declarations to the effect that it is the intent of the Legislature in enacting specified legislation, which was previously enacted, to terminate the permanent injunction stemming from the decision in *Keyhea v. Rushen* providing a process for the involuntary administration of psychotropic medication to prisoners, and to replace those provisions with the provisions previously enacted, as specified.

This bill would revise the provisions authorizing the Department of Corrections and Rehabilitation to seek to initiate involuntary medication on a nonemergency basis only if specified conditions are met by instead requiring that the psychiatrist make a determination that the inmate is gravely disabled and does not have the capacity to refuse treatment with psychiatric medication, or is a danger to self or others. If psychiatric medication is administered on an emergency or interim basis, the bill would require the department to give notice to the inmate of its intention to seek an ex parte order if the situation necessitates the continuation of medication beyond the initial 72 hours pending a full mental health hearing, as provided. The bill would delete references to psychotropic medications throughout the provisions described above and instead refer to psychiatric medications. The bill would also enact provisions governing involuntary medication proceedings similar to those described above, as revised, that would be available to counties for inmates in a county jail, and would, in addition, authorize either a psychiatrist or a psychologist to make the determinations described above. The bill would also make clarifying changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature, in amending
2 Section 2600 and enacting Section 2602 in Assembly Bill 1114
3 of the 2011–12 Regular Session, to terminate the permanent
4 injunction stemming from the decision in *Keyhea v. Rushen*, 178
5 Cal.App.3d 536, and to replace the provisions of the injunction
6 with the provisions contained within Section 2602 of the Penal
7 Code.

8 SEC. 2. Section 2602 of the Penal Code is amended to read:

9 2602. (a) Except as provided in subdivision (b), no person
10 sentenced to imprisonment or housed in a state prison shall be
11 administered any psychiatric medication without his or her prior
12 informed consent.

13 (b) If a psychiatrist determines that an inmate should be treated
14 with psychiatric medication, but the inmate does not consent, the
15 inmate may be involuntarily treated with the medication. Treatment
16 may be given on either a nonemergency basis as provided in
17 subdivision (c), or on an emergency or interim basis as provided
18 in subdivision (d).

19 (c) The Department of Corrections and Rehabilitation may seek
20 to initiate involuntary medication on a nonemergency basis only
21 if all of the following conditions have been met:

22 (1) A psychiatrist has determined that the inmate has a serious
23 mental disorder.

24 (2) A psychiatrist has determined that, as a result of that mental
25 disorder, the inmate is gravely disabled and does not have the
26 capacity to refuse treatment with psychiatric medications or is a
27 danger to self or others.

28 (3) A psychiatrist has prescribed one or more psychiatric
29 medications for the treatment of the inmate's disorder, has
30 considered the risks, benefits, and treatment alternatives to
31 involuntary medication, and has determined that the treatment
32 alternatives to involuntary medication are unlikely to meet the
33 needs of the patient.

34 (4) The inmate has been advised of the risks and benefits of,
35 and treatment alternatives to, the psychiatric medication and refuses
36 or is unable to consent to the administration of the medication.

37 (5) The inmate is provided a hearing before an administrative
38 law judge.

1 (6) The inmate is provided counsel at least 21 days prior to the
2 hearing, unless emergency or interim medication is being
3 administered pursuant to subdivision (d), in which case the inmate
4 would receive expedited access to counsel. The hearing shall be
5 held not more than 30 days after the filing of the notice with the
6 Office of Administrative Hearings, unless counsel for the inmate
7 agrees to extend the date of the hearing.

8 (7) The inmate and counsel are provided with written notice of
9 the hearing at least 21 days prior to the hearing, unless emergency
10 or interim medication is being administered pursuant to subdivision
11 (d), in which case the inmate would receive an expedited hearing.
12 The written notice shall do all of the following:

13 (A) Set forth the diagnosis, the factual basis for the diagnosis,
14 the basis upon which psychiatric medication is recommended, the
15 expected benefits of the medication, any potential side effects and
16 risks to the inmate from the medication, and any alternatives to
17 treatment with the medication.

18 (B) Advise the inmate of the right to be present at the hearing,
19 the right to be represented by counsel at all stages of the
20 proceedings, the right to present evidence, and the right to
21 cross-examine witnesses. Counsel for the inmate shall have access
22 to all medical records and files of the inmate, but shall not have
23 access to the confidential section of the inmate's central file which
24 contains materials unrelated to medical treatment.

25 (C) Inform the inmate of his or her right to contest the finding
26 of an administrative law judge authorizing treatment with
27 involuntary medication by filing a petition for writ of
28 administrative mandamus pursuant to Section 1094.5 of the Code
29 of Civil Procedure, and his or her right to file a petition for writ
30 of habeas corpus with respect to any decision of the Department
31 of Corrections and Rehabilitation to continue treatment with
32 involuntary medication after the administrative law judge has
33 authorized treatment with involuntary medication.

34 (8) An administrative law judge determines by clear and
35 convincing evidence that the inmate has a mental illness or
36 disorder, that as a result of that illness the inmate is gravely
37 disabled and lacks the capacity to consent to or refuse treatment
38 with psychiatric medications or is a danger to self or others if not
39 medicated, that there is no less intrusive alternative to involuntary
40 medication, and that the medication is in the inmate's best medical

1 interest. Failure of the department to provide timely or adequate
2 notice pursuant to this section shall be excused only upon a
3 showing of good cause and the absence of prejudice to the inmate.
4 In making this determination, the administrative law judge may
5 consider factors including, but not limited to, the ability of the
6 inmate's counsel to adequately prepare the case and to confer with
7 the inmate, the continuity of care, and, if applicable, the need for
8 protection of the inmate or institutional staff that would be
9 compromised by a procedural default.

10 (9) The historical course of the inmate's mental disorder, as
11 determined by available relevant information about the course of
12 the inmate's mental disorder, shall be considered when it has direct
13 bearing on the determination of whether the inmate is a danger to
14 self or others, or is gravely disabled and incompetent to refuse
15 medication as the result of a mental disorder.

16 (10) An inmate is entitled to file one motion for reconsideration
17 following a determination that he or she may receive involuntary
18 medication, and may seek a hearing to present new evidence, upon
19 good cause shown.

20 (d) Nothing in this section is intended to prohibit a physician
21 from taking appropriate action in an emergency. An emergency
22 exists when there is a sudden and marked change in an inmate's
23 mental condition so that action is immediately necessary for the
24 preservation of life or the prevention of serious bodily harm to the
25 inmate or others, and it is impractical, due to the seriousness of
26 the emergency, to first obtain informed consent. If psychiatric
27 medication is administered during an emergency, the medication
28 shall only be that which is required to treat the emergency condition
29 and shall be administered for only so long as the emergency
30 continues to exist. If the Department of Corrections and
31 Rehabilitation's clinicians identify a situation that jeopardizes the
32 inmate's health or well-being as the result of a serious mental
33 illness, and necessitates the continuation of medication beyond
34 the initial 72 hours pending the full mental health hearing, the
35 department shall give notice to the inmate and his or her counsel
36 of the department's intention to seek an ex parte order to allow the
37 continuance of medication pending the full hearing. The notice
38 shall be served upon the inmate and counsel at the same time the
39 inmate is given the written notice that the involuntary medication
40 proceedings are being initiated and is appointed counsel as

1 provided in subdivision (c). The order may be issued ex parte upon
2 a showing that in the absence of the medication the emergency
3 conditions are likely to recur. The request for an ex parte order
4 shall be supported by an affidavit from the psychiatrist showing
5 specific facts. The inmate and the inmate's appointed counsel shall
6 have two business days to respond to the department's ex parte
7 request to continue interim medication, and may present facts
8 supported by an affidavit in opposition to the department's request.
9 An administrative law judge shall review the ex parte request and
10 shall have three business days to determine the merits of the
11 department's request for an ex parte order. If an order is issued,
12 the psychiatrist may continue the administration of the medication
13 until the hearing described in paragraph (5) of subdivision (c) is
14 held.

15 (1) The Department of Corrections and Rehabilitation shall file
16 with the Office of Administrative Hearings, and serve on the inmate
17 and his or her counsel, the written notice described in paragraph
18 (7) of subdivision (c) within 72 hours of commencing medication
19 pursuant to this subdivision, unless either of the following occurs:

20 (A) The inmate gives informed consent to continue the
21 medication.

22 (B) A psychiatrist determines that the psychiatric medication
23 is not necessary and administration of the medication is
24 discontinued.

25 (2) If medication is being administered pursuant to this
26 subdivision, the hearing described in paragraph (5) of subdivision
27 (c) shall commence within 21 days of the filing and service of the
28 notice, unless counsel for an inmate agrees to a different period
29 of time.

30 (3) With the exception of the timeline provisions specified in
31 paragraphs (1) and (2) for providing notice and commencement
32 of the hearing pursuant to the conditions specified in this
33 subdivision, the inmate shall be entitled to and be given the same
34 due process protections as specified in subdivision (c). The
35 department shall prove the same elements supporting the
36 involuntary administration of psychiatric medication and the
37 administrative law judge shall be required to make the same
38 findings described in subdivision (c).

39 (e) The determination that an inmate may receive involuntary
40 medication shall be valid for one year from the date of the

1 determination, regardless of whether the inmate subsequently gives
2 his or her informed consent.

3 (f) If a determination has been made to involuntarily medicate
4 an inmate pursuant to subdivision (c) or (d), the medication shall
5 be discontinued one year after the date of that determination, unless
6 the inmate gives his or her informed consent to the administration
7 of the medication, or unless a new determination is made pursuant
8 to the procedures set forth in subdivision (g).

9 (g) To renew an existing order allowing involuntary medication,
10 the department shall file with the Office of Administrative
11 Hearings, and shall serve on the inmate and his or her counsel, a
12 written notice indicating the department's intent to renew the
13 existing involuntary medication order.

14 (1) The request to renew the order shall be filed and served no
15 later than 21 days prior to the expiration of the current order
16 authorizing involuntary medication.

17 (2) The inmate shall be entitled to, and shall be given, the same
18 due process protections as specified in subdivision (c).

19 (3) Renewal orders shall be valid for one year from the date of
20 the hearing.

21 (4) An order renewing an existing order shall be granted based
22 on clear and convincing evidence that the inmate has a serious
23 mental disorder that requires treatment with psychiatric medication,
24 and that, but for the medication, the inmate would revert to the
25 behavior that was the basis for the prior order authorizing
26 involuntary medication, coupled with evidence that the inmate
27 lacks insight regarding his or her need for the medication, such
28 that it is unlikely that the inmate would be able to manage his or
29 her own medication and treatment regimen. No new acts need be
30 alleged or proven.

31 (5) If the department wishes to add a basis to an existing order,
32 the department shall give the inmate and the inmate's counsel
33 notice in advance of the hearing via a renewal notice or
34 supplemental petition. Within the renewal notice or supplemental
35 petition, as described in subdivision (g), the department shall
36 specify what additional basis is being alleged and what qualifying
37 conduct within the past year supports that additional basis. The
38 department shall prove the additional basis and conduct by clear
39 and convincing evidence at a hearing as specified in subdivision
40 (c).

1 (6) The hearing on any petition to renew an order for involuntary
2 medication shall be conducted prior to the expiration of the current
3 order.

4 (h) Pursuant to Section 5058, the Department of Corrections
5 and Rehabilitation shall adopt regulations to fully implement this
6 section.

7 (i) In the event of a conflict between the provisions of this
8 section and the Administrative Procedure Act (Chapter 4.5
9 (commencing with Section 11400) of Part 1 of Division 3 of the
10 Government Code), this section shall control.

11 SEC. 3. Section 2603 is added to the Penal Code, to read:

12 2603. (a) Except as provided in subdivision (b), no person
13 sentenced to imprisonment in a county jail shall be administered
14 any psychiatric medication without his or her prior informed
15 consent.

16 (b) If a psychiatrist determines that an inmate should be treated
17 with psychiatric medication, but the inmate does not consent, the
18 inmate may be involuntarily treated with the medication. Treatment
19 may be given on either a nonemergency basis as provided in
20 subdivision (c), or on an emergency or interim basis as provided
21 in subdivision (d).

22 (c) A county department of mental health, *or other designated*
23 *county department*, may seek to initiate involuntary medication
24 on a nonemergency basis only if all of the following conditions
25 have been met:

26 (1) A psychiatrist or psychologist has determined that the inmate
27 has a serious mental disorder.

28 (2) A psychiatrist or psychologist has determined that, as a result
29 of that mental disorder, the inmate is gravely disabled and does
30 not have the capacity to refuse treatment with psychiatric
31 medications, or is a danger to self or others.

32 (3) A psychiatrist has prescribed one or more psychiatric
33 medications for the treatment of the inmate's disorder, has
34 considered the risks, benefits, and treatment alternatives to
35 involuntary medication, and has determined that the treatment
36 alternatives to involuntary medication are unlikely to meet the
37 needs of the patient.

38 (4) The inmate has been advised of the risks and benefits of,
39 and treatment alternatives to, the psychiatric medication and

1 refuses, or is unable to consent to, the administration of the
2 medication.

3 (5) The inmate is provided a hearing before a superior court
4 judge, a court-appointed commissioner or referee, or a
5 court-appointed hearing officer, as specified in subdivision (c) of
6 Section 5334 of the Welfare and Institutions Code.

7 (6) The inmate is provided counsel at least 21 days prior to the
8 hearing, unless emergency or interim medication is being
9 administered pursuant to subdivision (d), in which case the inmate
10 would receive expedited access to counsel. The hearing shall be
11 held not more than 30 days after the filing of the notice with the
12 superior court, unless counsel for the inmate agrees to extend the
13 date of the hearing.

14 (7) The inmate and counsel are provided with written notice of
15 the hearing at least 21 days prior to the hearing, unless emergency
16 or interim medication is being administered pursuant to subdivision
17 (d), in which case the inmate would receive an expedited hearing.
18 The written notice shall do all of the following:

19 (A) Set forth the diagnosis, the factual basis for the diagnosis,
20 the basis upon which psychiatric medication is recommended, the
21 expected benefits of the medication, any potential side effects and
22 risks to the inmate from the medication, and any alternatives to
23 treatment with the medication.

24 (B) Advise the inmate of the right to be present at the hearing,
25 the right to be represented by counsel at all stages of the
26 proceedings, the right to present evidence, and the right to
27 cross-examine witnesses. Counsel for the inmate shall have access
28 to all medical records and files of the inmate, but shall not have
29 access to the confidential section of the inmate's central file which
30 contains materials unrelated to medical treatment.

31 (C) Inform the inmate of his or her right to appeal the
32 determination to the superior court or the court of appeal as
33 specified in subdivisions (e) and (f) of Section 5334 of the Welfare
34 and Institutions Code, and his or her right to file a petition for writ
35 of habeas corpus with respect to any decision of the county
36 department of mental health, *or other designated county*
37 *department*, to continue treatment with involuntary medication
38 after the superior court judge, court-appointed commissioner or
39 referee, or court-appointed hearing officer has authorized treatment
40 with involuntary medication.

(8) A superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer determines by clear and convincing evidence that the inmate has a mental illness or disorder, that as a result of that illness the inmate is gravely disabled and lacks the capacity to consent to or refuse treatment with psychiatric medications or is a danger to self or others if not medicated, that there is no less intrusive alternative to involuntary medication, and that the medication is in the inmate's best medical interest. In the event of any statutory notice issues with either initial or renewal filings by the county department of mental health, *or other designated county department*, the superior court judge, court-appointed commissioner or referee, or court-appointed hearing officer shall hear arguments as to why the case should be heard, and shall consider factors such as the ability of the inmate's counsel to adequately prepare the case and to confer with the inmate, the continuity of care, and, if applicable, the need for protection of the inmate or institutional staff that would be compromised by a procedural default.

(9) The historical course of the inmate's mental disorder, as determined by available relevant information about the course of the inmate's mental disorder, shall be considered when it has direct bearing on the determination of whether the inmate is a danger to self or others, or is gravely disabled and incompetent to refuse medication as the result of a mental disorder.

(10) An inmate is entitled to file one motion for reconsideration following a determination that he or she may receive involuntary medication, and may seek a hearing to present new evidence, upon good cause shown.

(d) Nothing in this section is intended to prohibit a physician from taking appropriate action in an emergency. An emergency exists when there is a sudden and marked change in an inmate's mental condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others, and it is impractical, due to the seriousness of the emergency, to first obtain informed consent. If psychiatric medication is administered during an emergency, the medication shall only be that which is required to treat the emergency condition and shall be administered for only so long as the emergency continues to exist. If the *clinicians of the* county department of mental ~~health's clinicians~~ *health, or other designated county*

department, identify a situation that jeopardizes the inmate's health or well-being as the result of a serious mental illness, and necessitates the continuation of medication beyond the initial 72 hours pending the full mental health hearing, the county department may seek to continue the medication by giving notice to the inmate and his or her counsel of its intention to seek an ex parte order to allow the continuance of medication pending the full hearing. Treatment of the inmate in a facility pursuant to Section 4011.6 shall not be required in order to continue medication under this subdivision unless the treatment is otherwise medically necessary. The notice shall be served upon the inmate and counsel at the same time the inmate is given the written notice that the involuntary medication proceedings are being initiated and is appointed counsel as provided in subdivision (c). The order may be issued ex parte upon a showing that, in the absence of the medication the emergency conditions are likely to recur. The request for an ex parte order shall be supported by an affidavit from the psychiatrist or psychologist showing specific facts. The inmate and the inmate's appointed counsel shall have two business days to respond to the county department of mental health's *department's* ex parte request to continue interim medication, and may present facts supported by an affidavit in opposition to the department's request. A superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer shall review the ex parte request and shall have three business days to determine the merits of the department's request for an ex parte order. If an order is issued, the psychiatrist may continue the administration of the medication until the hearing described in paragraph (5) of subdivision (c) is held.

(1) If the county elects to seek an ex parte order pursuant to this subdivision, the county department of mental health, *or other designated county department*, shall file with the superior court, and serve on the inmate and his or her counsel, the written notice described in paragraph (7) of subdivision (c) within 72 hours of commencing medication pursuant to this subdivision, unless either of the following occurs:

(A) The inmate gives informed consent to continue the medication.

1 (B) A psychiatrist determines that the psychiatric medication
2 is not necessary and administration of the medication is
3 discontinued.

4 (2) If medication is being administered pursuant to this
5 subdivision, the hearing described in paragraph (5) of subdivision
6 (c) shall commence within 21 days of the filing and service of the
7 notice, unless counsel for the inmate agrees to a different period
8 of time.

9 (3) With the exception of the timeline provisions specified in
10 paragraphs (1) and (2) for providing notice and commencement
11 of the hearing in emergency or interim situations, the inmate shall
12 be entitled to and be given the same due process protections as
13 specified in subdivision (c). The county department of mental
14 health, *or other designated county department*, shall prove the
15 same elements supporting the involuntary administration of
16 psychiatric medication and the superior court judge,
17 court-appointed commissioner or referee, or court-appointed
18 hearing officer shall be required to make the same findings
19 described in subdivision (c).

20 (e) The determination that an inmate may receive involuntary
21 medication shall be valid for one year from the date of the
22 determination, regardless of whether the inmate subsequently gives
23 his or her informed consent.

24 (f) If a determination has been made to involuntarily medicate
25 an inmate pursuant to subdivision (c) or (d), the medication shall
26 be discontinued one year after the date of that determination, unless
27 the inmate gives his or her informed consent to the administration
28 of the medication, or unless a new determination is made pursuant
29 to the procedures set forth in subdivision (g).

30 (g) To renew an existing order allowing involuntary medication,
31 the county department of mental health, *or other designated county*
32 *department*, shall file with the superior court, and shall serve on
33 the inmate and his or her counsel, a written notice indicating the
34 department's intent to renew the existing involuntary medication
35 order.

36 (1) The request to renew the order shall be filed and served no
37 later than 21 days prior to the expiration of the current order
38 authorizing involuntary medication.

39 (2) The inmate shall be entitled to, and shall be given, the same
40 due process protections as specified in subdivision (c).

1 (3) Renewal orders shall be valid for one year from the date of
2 the hearing.

3 (4) An order renewing an existing order shall be granted based
4 on clear and convincing evidence that the inmate has a serious
5 mental disorder that requires treatment with psychiatric medication,
6 and that, but for the medication, the inmate would revert to the
7 behavior that was the basis for the prior order authorizing
8 involuntary medication, coupled with evidence that the inmate
9 lacks insight regarding his or her need for the medication, such
10 that it is unlikely that the inmate would be able to manage his or
11 her own medication and treatment regimen. No new acts need be
12 alleged or proven.

13 (5) If the county department of mental health, *or other*
14 *designated county department*, wishes to add a basis to an existing
15 order, it shall give the inmate and the inmate's counsel notice in
16 advance of the hearing via a renewal notice or supplemental
17 petition. Within the renewal notice or supplemental petition, as
18 described in subdivision (g), the county department of mental
19 health, *or other designated county department*, shall specify what
20 additional basis is being alleged and what qualifying conduct within
21 the past year supports that additional basis. The county department
22 of mental health, *or other designated county department*, shall
23 prove the additional basis and conduct by clear and convincing
24 evidence at a hearing as specified in subdivision (c).

25 (6) The hearing on any petition to renew an order for involuntary
26 medication shall be conducted prior to the expiration of the current
27 order.

28 (h) In the event of a conflict between the provisions of this
29 section and the Administrative Procedure Act (Chapter 4.5
30 (commencing with Section 11400) of Part 1 of Division 3 of the
31 Government Code), this section shall control.